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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,379	08/15/2001	Christian Kropf	H 3763 PCT/U	8884

423 7590 03/18/2003

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EXAMINER
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ROSE, SHEP K

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 03/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/8683 79

Applicant(s)

KROFF, J.

Examiner

S HEP ROSE

Group Art Unit

1614

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 2/11/2003
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.  
Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☒ Other \_\_\_\_\_

Office Action Summary

Art Unit: 1614

The reply filed on 2/11/03 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): Rudin et al. U.S. 6254855 (cited, of record) claims the identical process, claimed by applicants herein, of making the identical (unusually shaped, non-spheroidal) hydroxy apatite (HAP) particles, claims the identical suspensions of them, claims their uses in toothpaste, (same as herein), and differs from applicants herein in (1) antedating applicants December 18, 1998 priority date (by less than one year, (PCT-PUB 5/7/1998-WO 0098/18719, (cited by the EPO), and (2) not disclosing or claiming any solution to their discovered agglomeration problem by including at least 0.01% of a water-soluble surfactant or a water soluble protective colloid, (as claimed by applicants).

The Feb 11, 2003 response does overcome Rudin et al. WO 0099/20237 (4/99) but does not fully reflect the telephonic interviews (request of the USPTO Examiner) to (1) review the issue of a potential interference with Rudin et al. U.S. 6254855 (preferably in a continuation application) (to preserve applicants' rights thereto) and to expedite the prosecution herein, to present argument for patentability on the balance of the cited art on the PTO-892, which does disclose surfactants or protective colloids with these HAP particles, taken alone, (or taken with Rudin et al. U.S. 6254855), (even if they are silent on the "inherent" agglomeration problem).

See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to

Art Unit: 1614

avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shep Rose whose telephone number is (703) 308-4609. The examiner can normally be reached on Monday, Tuesday, and Thursday 7:30am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on (703) 308-4725. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



**SHEP K. ROSE**  
**PRIMARY EXAMINER**

Rose/tgd  
March 18, 2003

Shep Rose  
Senior Primary Examiner  
Art Unit 1614